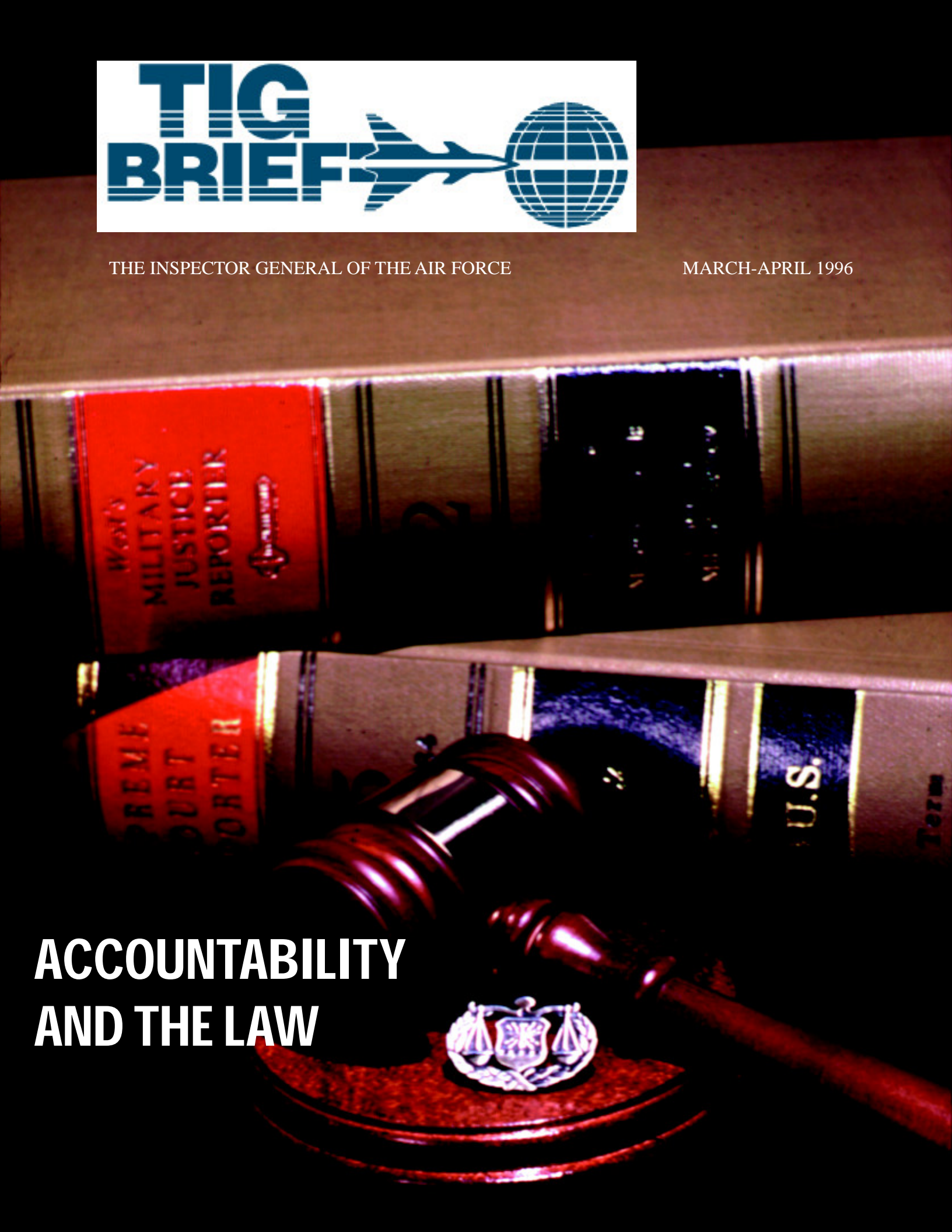




THE INSPECTOR GENERAL OF THE AIR FORCE

MARCH-APRIL 1996

ACCOUNTABILITY AND THE LAW



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From the editor

As *TIG Brief* has done in the past, we are pursuing a central theme for each issue we publish. Your survey inputs indicated you wanted an issue specifically on legal policy issues, so here you have it. You'll find the signature article by Maj. Gen. Bryan Hawley provides a broad stroke to accountability in today's Air Force while the article on page 18 provides specific guidance on wills, powers of attorneys, and medical directives. From the second chance offered under the Return to Duty Program to the latest on natural disaster claims, the remainder of this issue speaks to myriad legal concerns we, as service members, are both interested in and need to know.

We welcome your ongoing feedback to continually improve *TIG Brief* and we solicit your articles on the topics you feel merit sharing with the rest of the Air Force. Our ultimate goal is for *TIG Brief* to be **your** management tool for improving the Air Force.



ANGELA L. ELLARD, Captain, USAF
Editor, *TIG Brief*



AFRP 90-1

STRENGTH THROUGH VIGILANCE

The Inspector General Brief
March-April 1996
Volume XLVIII, Number 2

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Farewell



The past two and one-half years have passed quickly. Shortly after I took the reins as the IG in December 1993, I prepared an article for *TIG Brief* outlining some areas I thought were important. They were:

First, focus on our core functions of being the eyes and ears of our commanders, identifying problems (early), providing recommended solutions, and resolving the concerns of our people.

Second, be sensitive to the needs and desires of our customers.

Third, be proactive.

Fourth, do all the above with reduced resources.

How did we do? Not bad—in fact, I would say with the superb work by all of you doing IG business around the Air Force we've accomplished those four goals. Sure, there's always more to do but we've made real progress. My personal thanks to each of you.

As I “shake the stick” on March 15th (symbolic passing of aircraft control), I do so with some nostalgia but with great confidence that the IG and the Air Force are in good hands.

Thanks for a wonderful 35 years—and a rewarding two and one-half years as your TIG.

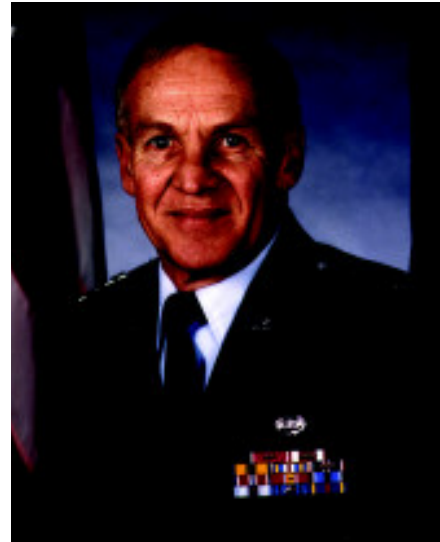
A handwritten signature in cursive script, reading "William B. Anderson".

The Inspector General

The new Air Force Deputy Inspector General is Maj. Gen. William B. Davitte, formerly the commander of the Air Force Personnel Center. At the time of this printing, Lt. Gen. Anderson's successor had not been named.

Leadership, Standards, and Accountability

Maj. Gen. Bryan Hawley



“Colonel Pleads Guilty To Dereliction In Crash.” “For Seven, Evaluations That Will End Careers.” “General Demoted, Air Force Confirms.” These dramatic headlines jumped from the front pages to jar our collective senses during the past year. Headlines like these tend to represent different things to different people. To some, such blunt public indictments evoke embarrassment that fellow service members—senior officers in some instances—have tarnished the Air Force image either by engaging in unacceptable personal conduct or by committing serious professional derelictions associated with incidents that cost the lives of others. To the individuals toward whom the articles were directed, the headlines write—and represent—an early epitaph to once promising and, in some cases, long and previously distinguished careers. Despite the obvious personal tragedy, as a judge advocate and particularly in my new role as The Judge Advocate General, headlines such as these contain

another significant aspect.

I have been an Air Force officer and judge advocate for nearly 29 years. During that time, I have served as a staff lawyer; an instructor at the Air Force Academy; a military judge; senior legal advisor to wing, numbered Air Force, and major command commanders and their staffs; and a commander. Throughout my career—as has every judge advocate—I have preached the necessity for leadership, adherence to standards, and holding those who have “the stick” accountable for their actions and decisions. I have done this whenever the opportunity arose—whether teaching the young ones at the Air Force Academy about the law or advising senior commanders about how best to dispose of UCMJ offenses. And like all judge advocates, I have sometimes wondered whether my audience was listening to the message. That concern has been the strongest when it was a commander I wasn’t sure was listening.

These headlines then are a

reminder of what I am finding increasingly true in today’s Air Force. When it comes to our core values—integrity, excellence, service before self—our current senior leaders don’t just “talk the talk,” they truly “walk the walk.” I found that repeatedly true with both Gen. Loh and Gen. Ralston at HQ ACC. Neither commander ever flinched when it came to making tough disciplinary choices. More than a few of their decisions involved making a choice between loyalty to an individual and loyalty to the institution, our Air Force. In every instance, loyalty to the institution was the allegiance served. From my current vantage point on the Air Staff, it is plain to see that Gen. Fogleman operates the same way. One has only to look at his post-Black Hawk actions to realize his commitment to demanding quality leadership, adhering to standards, and preserving the principle that with authority goes accountability.

I want to focus for a moment on the subject of accountability.

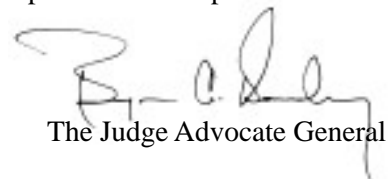
Of all of the facets of the Air Force mission with which members of the JAG department are involved, clearly one of the most important is helping commanders ensure accountability. My predecessor, Maj. Gen. Sklute, never missed an opportunity to stress to audiences at every level—from CORONA to base legal office staffs—the criticality of demanding accountability. Accountability is imperative to mission accomplishment, unit morale and cohesion, and public perception of (and confidence in) the military. My belief is equally strong; in this area of our business there can be no room for compromise. Before I left Air Combat Command, I read an editorial in the *Langley Flyer*. The subject was “Accountability,” and it was written by Lt. Col. Donald Jozayt, Commander, 71st Rescue Squadron. In the piece, Lt. Col. Jozayt quotes from an article that appeared in the *Wall Street Journal* in 1952. The article “Hobson’s Choice: Responsibility and Accountability” is about the Navy but I believe the lesson it teaches has uniform applicability to every service branch.

One night past, some 30,000 tons of ships went hurtling at each other through the darkness. When they had met, 2000 tons of ships and 176 men lay at the bottom of the sea in a far off place. Now comes the cruel business of accountability. Those who were there, those

who are left from those who were there, must answer how it happened and whose was the error that made it happen. It is a cruel business because it was no wish of destruction that killed this ship and its 176; the accountability lies with good men who erred in judgment under stress so great that it is almost its own excuse. Cruel because no matter how deep the probe, it cannot change the dead, because it cannot probe deeper than remorse. And it seems more cruel still, because all around us in other places we see the plea accepted that what was done is done beyond discussion, and that for good men in their human errors there should be afterwards no accountability. To err is not only human; it absolves responsibility. ... Everywhere, that is, except the sea. On the sea there is a tradition older even than the traditions of the country itself and wiser in its age than this new custom. It is the tradition that with responsibility goes authority, and with them goes accountability. This accountability is not for the intention but for the dead. The captain of a ship, like the captain of a state, is given honor and privileges and trust beyond other men. But let him set the wrong course, let him touch ground, let him bring disaster to his ship or to his men, and he must answer for what he had done. ... It is cruel,

this accountability of good and well-intentioned men. But the choice is that, or an end to responsibility and, finally, as the cruel sea taught, an end to the confidence and trust in the men who lead, for men will not long trust leaders who feel themselves beyond accountability for what they do. And when men lose confidence and trust in those who lead, order disintegrates into chaos and purposeful ships into uncontrollable derelicts. ...

Words like these need no further explanation from me or anyone; they say all that needs to be said. I leave you with this thought: JAGs are not solely responsible for ensuring accountability just as they are not solely responsible for administering military discipline. Neither are commanders. Accountability is the business of everyone—every blue suiter and every Air Force civilian. Without such a commitment by all of us, we will not long sustain our lofty vision of building the world’s most respected air and space force.✱


The Judge Advocate General

Special Interest Items

The Air Force Inspection Agency (AFIA) publishes the schedule of Special Interest Items (SII) to advise inspectors at all levels of current inspection efforts and to encourage crossfeed of inspection guides and information. This schedule contains ongoing Air Force and major command and field operating agency SIIs. Direct questions concerning specific SIIs to the agency monitors listed below.

Number	Title	Eff Date	Exp Date
USAF SIIs (Monitor: Maj. Vincent, DSN 246-1639)			
Completed			
ACC SIIs (Monitor: Ms. Brehm, DSN 574-8710)			
93-13	Quality Performance Measures	Active	Indef
93-15	Armament Delivery Recording	Active	Indef
94-1	Joint Oil Analysis Program	All	Indef
94-3	Supervisor of Flying	Active	Indef
95-1	Simplified Engineering Requisition Program	Active	Jan 97
95-2	American Express Program Management	Active	Indef
95-3	G-Awareness	All	Indef
95-4	Management of ACC Culture & Leadership	Active	Indef
95-5	Inflight Communications Discipline	Active	Indef
AETC SIIs (Monitor: Lt. Col. Oncale, DSN 487-5344)			
94-001	Automated Data Processing Equip. Accountability	01 Jul 94	30 Jun 96
94-003	Officer Performance Feedback Program	01 Nov 94	31 Oct 96
95-001	Computer Security	01 Jul 95	30 Jun 97
95-002	Simplified Acquisition of Base Engineer Req.	01 Nov 95	31 Oct 97
AFMC SIIs (Monitor: Maj. Rawlings, DSN 787-7650)			
Completed			
AFSOC SIIs (Monitor: Master Sgt. Baldwin, DSN 579-2856)			
Completed			
AFSPC SIIs (Monitor: Master Sgt. Madison, DSN 834-6362)			
95-2	Weapon Storage Area Security Enhancements	01 May 95	Indef
95-3	Weapon System Safety Assessment	01 Aug 95	31 Jul 96
95-4	Automated Data Processing Equip. Acct. & Maint.	16 Oct 95	15 Oct 97
96-1	Normalization of Supply Accounts	01 Mar 96	28 Feb 97
AMC SIIs (Monitor: Tech. Sgt. Jackson-Hansen, DSN 576-5975)			
95	Decentralization of Aviation Petroleum Program	16 Oct 95	16 Oct 96
96	Intelligence Automated Mission Support	01 Dec 94	01 Dec 96
100	Air Mobility Command Arming Policy	15 Jun 95	15 Jun 96

101	Implementation of DoD Instruction 1402.5	01 May 95	01 May 96
102	Improving AMC Space "A" Travel Opportunities	15 Oct 95	15 Oct 96
104	Service Contracts & Quality Assurance Evaluation Program	01 Oct 95	01 Oct 96
105	Documenting Aerial Port Workload	01 Feb 96	01 Feb 97
PACAF SII's (Monitor: Chief Master Sgt. Errecart, DSN 449-9316)			
93-001	Basic Allowance for Subsistence	01 Mar 93	28 Feb 96
93-002	IG Complaint & Fraud, Waste, & Abuse Program	01 Sep 93	31 Aug 96
93-003	Squadron Lounges or Private Organization Food & Beverages	01 Sep 93	31 Aug 96
95-001	Management of Government Property	01 Jul 95	30 Jun 96
96-001	Night Cockpit Illumination	15 Jan 96	14 Jan 97
96-002	Technical Order Compliance & Management	01 Feb 96	30 Jan 97
USAFE SII's (Monitor: Capt. Castor, DSN 480-6005/6017)			
036	Customer Service in Housing Management	01 Oct 93	Indef
039	USAFE Self Help Program	01 Jan 94	30 Dec 96
040	Internal Controls of Cash Accountability	01 Jan 95	31 Aug 96
AFRES SII's (Monitor: Master Sgt. Fox, DSN 497-1496)			
015	Appr. Leave Status for ARTS Performing Military Duty	01 Apr 92	31 Mar 96
016	Reporting & Documentation Pilot Trainee Program	01 Mar 93	01 Mar 97
018	Corrosion Prevention & Aircraft Marking	01 Oct 94	01 Oct 98
019	Simplified Acquisition of Base Engineering Requirements	01 Jan 95	31 Dec 97
020	Aviation Petroleum Decentralization Program	01 Mar 95	29 Feb 96
021	Fuels Systems Section Management	01 Jun 95	31 May 99
ANG SII's (Monitor: Lt. Col. McClain, DSN 225-3624)			
92-1	Dual Compensation		Indef
93-2	G-Awareness (AETC & PACAF Only)		Indef
94-1	Information Processing Management System		Indef
96-1	Tactical Deception Program		Indef
CAP-USAF SII's (Monitor: Chief Master Sgt. Boyle, DSN 493-4286)			
93-2	Local Base Field Grade CAP Coordinators	01 Nov 93	30 Sep 96
AIA SII's (Monitor: Capt. Hammontree, DSN 969-2891)			
95-1	Enlisted Specialty Training	26 Feb 95	31 Jan 97
95-2	BAS and Subsistence in Kind	15 Apr 95	30 Sep 96
95-3	TDY History & Accumulator File	27 Nov 95	30 Sep 96
AFOSI SII's (Monitor: Special Agent Sowell, DSN 297-4552)			
94-1	Investigative Sufficiency & Documentation	01 Dec 94	Indef
94-2	Effectiveness of the MKM Process	01 Dec 94	Indef

DEMYSTIFYING THE JUDGE ADVOCATE AND INSPECTOR GENERAL RELATIONSHIP

Col. Charles Lucy
HQ AFIA/JA DSN 246-1642

"It is clear that a symbiotic relationship exists between the Judge Advocate and Inspector General worlds. ... Together they provide command with a formidable weapon—fact-based analysis capable of withstanding the closest scrutiny."

Shrouded in the mists of history, cloaked in secrecy, and guaranteed to strike terror in the faint of heart, the Office of the Inspector General (IG) has been a frequently misunderstood Air Force institution. The old joke that "We're here to help" and the familiar refrain, "We're glad you're here," like whistling past the graveyard, disguise a commonly shared fear that is part of the folklore of our service. Unfortunately, that misperception sometimes obscures an essential bond between the IG and his or her Staff Judge Advocate (SJA).

Fortunately, that relationship is changing and, in today's high threat environment, the wise SJAs are the ones who cultivate the same close relationship with their IG that they have with the

Office of Special Investigations and security police.

Instituted in the Continental Army in 1777, the IG function continues to serve four distinct purposes: to validate discipline, readiness, ethics, and standards; provide training and substitute experience as required; act as a safety valve to quickly surface unit problems for action; and enhance public confidence in military institutions.

All four of these objectives are interrelated in that the IG system is truly designed to act as the "eyes and ears" of the commander. In this sense, there is a kinship with the fundamental role of the SJA to be an "honest broker" to command. Allegations raised through the IG system will often expose your boss to his or her greatest vulnerability and require maximum discretion, honesty, and sensitivity to resolve. If these institutions can't bring the boss the news, both

good and bad, no one can. For this reason, both share a unique privilege that can and should be reinforced.

The best way for a local legal office to do this is to become familiar with Air Force Instruction (AFI) 90-301, *Inspector General Complaints*. As with many of our current AFIs, it is a compilation of several predecessor Air Force regulations and is must reading for anyone providing advice on commander-directed inquiries, senior official cases, and senior officer unfavorable information files, to name only a few examples. Paragraph 1.6 outlines specific SJA responsibilities, including providing appropriate legal advice, overseeing the disposition of evidence, and providing comprehensive legal sufficiency reviews. If a report substantiates allegations which require a disciplinary response, then appropriate adverse actions advice will be required. Finally, Freedom of Information Act requests for report results will also dictate legal office involvement. A proactive approach will avoid major problems.

Air Force Instruction 90-301 also imposes a reciprocal responsibility on IG investigating officers (IO) to seek the advice of their SJA, as noted in paragraph 1.12.4.1. In many cases, these individuals are appointed on an ad hoc basis and have limited training regarding their responsi-

bilities. Fortunately, most major commands have excellent IO guides for easy reference and AFI 90-301 contains some useful attachments to help an IO get started. However, there is no substitute for the advice of an experienced counselor who is familiar with the intricacies of due process and a thorough investigation. In this regard, proper formulation of the allegations of a complaint to ensure a concise statement of who did what in violation of what standard, called “framing the issues” by IGs, can be of enormous value in getting an IO focused on the underlying issues in a case. In addition, reviewing an IO investigation plan before beginning an investigation can eliminate potential problems and sometimes identify shortcuts to speed the investigation. By getting a judge advocate involved in the process early, the IO increases the chances of a good report and favorable legal review down the line.

The JA/IG dynamic works best when both parties understand their respective roles and work to supplement them. In this regard, an IG investigation is not criminal in nature and is, therefore, not bound by the formal rules of evidence or beyond a reasonable doubt standard of proof. On the other hand, IGs do read suspects their Article 31 or Fifth Amendment rights and, although they are required to consult with their

SJA and defer to local law enforcement agencies when they uncover criminal misconduct, those agencies often lack the resources to pursue some of the threshold violations uncovered by an IO. These cases require close JA scrutiny since IG reports are privileged documents which may only be released under certain carefully defined circumstances articulated in AFI 90-301, Chapter 4. Any SJA contemplating criminal action as a result of an IG report must be familiar with these procedures and should also be thinking about the inevitable defense discovery request. An alert SJA will also be aware of potential conflict of interest problems and keep the advisory functions of his or her staff distinct as required by AFI 90-301, paragraph 1.6.1.4.

It is clear that a symbiotic relationship exists between the Judge Advocate and Inspector General worlds. The IG serves a vital role on the commander’s staff which is enhanced by JA involvement. The JA serves an equally vital role which can also be enhanced by an IG system that is effective and fair in theory as well as in practice. Together they provide command with a formidable weapon—fact-based analysis capable of withstanding the closest scrutiny.✴

The UCMJ and You

A Quick Overview

Maj. David Cory and Maj. Rick Russell
AFLSA/JAJM DSN 297-1539

“A truly innocent person stands a far greater chance of being acquitted every time in a military court than in any other court in America.”

The Uniform Code of Military Justice (UCMJ) celebrates its 46th birthday on May 5, 1996. Since its creation by Congress in 1950, it has served as a uniform set of laws designed to promote justice and assist in maintaining good order and discipline in the military. As a result, it has served to strengthen the national security of the United States. It has been continually refined by our nation’s lawmakers in an ongoing effort to ensure it is modern, efficient, and fair in serving the accused individual and the military.

The UCMJ, as a federal statute, is the product of legislation enacted by Congress. The UCMJ is implemented by a series of executive orders published in the form of the Manual for Courts-Martial (MCM). The MCM, 1995 Edition, is the compilation of eight executive orders signed by Presidents Reagan, Bush, and Clinton. Periodically, changes are made to the UCMJ and the MCM. These changes are typically in the form of “fine-tuning” but occasionally encompass more sweeping

changes. The Air Force provides input for proposed changes through the Joint Service Committee on Military Justice.

Court decisions also serve to interpret and shape military law. For example, in the landmark 1987 case of *Solorio v. United States*, the U.S. Supreme Court *expanded* the military’s jurisdiction over offenses committed by service members. The Supreme Court ruled that the military status of the member alone gives jurisdiction. Any violation of the UCMJ is now within the military’s jurisdiction regardless of whether the member was on leave or far away from any military installation. This decision is evidence of the Supreme Court’s confidence in the military legal system.

The “checks and balances” of the military justice system ensure the rights of individuals are protected. These safeguards, when compared to the civilian criminal justice system, led well-known civilian trial attorney F. Lee Bailey to conclude, “A truly innocent person stands a far greater chance of being acquitted every time in a military court

I advise you that under the provisions of Article 31, UCMJ, you have the right to remain silent, that is, say nothing at all. Any statement you make, oral or written, may be used as evidence against you in a trial by court-martial or in other judicial or administrative proceedings. You have the right to consult a lawyer and to have a lawyer present during this interview. You have the right to military legal counsel free of charge. In addition to military counsel, you are entitled to civilian counsel of your own choosing, at your own expense. You may request a lawyer at any time during this interview. If you decide to answer questions, you may stop the questioning at any time. Do you understand your rights? Do you want a lawyer? Are you willing to answer questions?

than in any other court in America.” Some of those protections Bailey refers to include self-incrimination protections under Article 31, UCMJ, which *exceed* those of Miranda and Fifth Amendment rights. Keep in mind that Article 31 actually predated Miranda by 16 years. The UCMJ and MCM also provide the accused with far broader and easier discovery rights to find out before trial what evidence the government possesses.

Article 32, UCMJ, provides for a pretrial investigation hearing which is the military’s counterpart to a civilian grand jury. Again, the UCMJ and MCM provide an accused with more rights and opportunities than does his or her civilian counterpart. Most civilian defendants and attorneys would prefer a system such as the military’s in which preliminary matters are handled openly, with the right to present evidence and cross-examine prosecution witnesses. The military system also guarantees a service member is provided with

free legal representation regardless of ability to pay, unlike the civilian system. An accused military member can request a specific military defense counsel by name, and this request will be granted if the attorney is reasonably available. Free representation by military counsel continues during any post-trial appeals, up to and including the Supreme Court. Service members are also able to choose civilian defense representation at their own expense. In such situations, the military defense counsel typically remains on the case to assist the civilian attorney.

Even a quick review of the UCMJ will show its many safeguards designed to serve the needs of the military and the rights of the individual service member. Commanders, first sergeants, supervisors, staff judge advocates, prosecutors, defense counsel, and trial and appellate court judges all play a role in ensuring the military justice system continues to remain, in the words of F. Lee Bailey, “...a masterpiece of forward thinking, far more modern than any other U.S. judicial system, state or federal.”



Lt. Col. Michael Breslin
AFLSA/JAJG DSN 297-1546

The military justice system is the newest, most forward-thinking criminal code in our nation and is certainly the most protective of individual rights. Those who are familiar with trials by court-martial may be aware of some of the rights and benefits military members have which their civilian counterparts do not have. However, a large part of this legal process occurs after the trial and most people are not aware of it. Our military justice process provides a comprehensive system for considering appeals of court-martial convictions that gives greater protection to military members than comparable civilian systems.

First, military members are guaranteed the right to have military lawyers represent them during all stages of their appeal,

free of charge. In the civilian world, a defendant is required to pay for an appellate lawyer unless the defendant meets strict requirements of indigency or poverty, in which case they may have a lawyer appointed. The administrative cost of making an appeal can be enormous. The cost of transcribing a record of trial alone can be staggering. A civilian appellant may have to bear this expense—for military members it is free. The practical effect of this is that military members are more likely to have their case presented on appeal than their civilian counterparts.

Generally speaking, everyone convicted of criminal offenses in the United States has the right to appeal, unless the offense is especially minor. Military members have an extra opportunity for

relief which civilians do not have. Service members have the right to present matters in extenuation and mitigation to a commander and request leniency, even before the formal appeal process begins. They are guaranteed the services of military lawyers for this phase of the process as well.

In the civilian sector, appeals are often handled by the attorneys who worked on the case at trial. The armed forces have specially designated staffs of highly trained, experienced attorneys who specialize in appellate practice, giving them exceptional insight into the law and the appellate courts.

Not only are appeals free for service members, they are mandatory in all cases where the sentence includes a punitive discharge or confinement for one year or more. These cases **must** be reviewed by an appellate court before a punitive discharge can be executed. Congress established the Courts of Criminal Appeals comprised of senior military judges for each service. A higher court described the Courts of Criminal Appeals as "something like the proverbial 800-pound gorilla when it comes to their ability to protect an accused."

Military appellants can also request review by the five-member civilian Court of Appeals

for the Armed Forces located in Washington, D.C. Just as civilians lead all the branches of the Department of Defense, civilian judges preside over the highest court within the military justice system. This court hears appeals from all the military services and assures that military justice is administered fairly and evenly.

Since 1983, military appellants have the right to petition the Supreme Court of the United States to hear their case. Although such cases are rare, the Supreme Court considers a few military cases each year, including courts-martial imposing the death penalty and cases involving major jurisdictional issues. Service members are represented by military counsel, free of charge, throughout this appeal.

Even if a military member does not receive a punishment serious enough to warrant review by appellate courts, he or she still gets a mandatory legal review at a headquarters before the findings and sentence can be approved. In these cases, the convicted military member also has the opportunity to submit matters in extenuation and mitigation and to request leniency from a commander. Even more importantly, cases with lesser punishments may also be reviewed by lawyers in the Office of the Judge Advocate General.

General courts-martial in this category are reviewed automatically and others can request review. The Judge Advocate General also has extraordinary powers of review including setting aside the conviction or sentence entirely.

Without doubt, the system established by law for review of court-martial convictions affords a convicted service member every opportunity for justice and leniency. Legal scholars have observed that citizens who take up the defense of their country do not thereby forfeit the protection of the law. Indeed, military members have more rights on appeal, as a legal and practical matter, than their civilian counterparts. ✱





Natural Disasters, Air Force Claims, and Insurance

Lt. Col. Richard Stansell-Gamm
AFLSA/JACC DSN 297-1571

Hurricane Opal's destructive journey through the panhandle of Florida, Hurlburt Field and Eglin Air Force Base re-emphasized the benefits associated with the Air Force claims program, some of its limitations, and the need for military members to obtain additional protection through private insurance. On Oct. 4, 1995, Hurricane Opal struck with winds peaking at 144 miles per hour and a huge storm surge. Located in the path of the storm, both Hurlburt Field and Eglin Air Force Base suffered extensive damage. In addition to the losses associated with the extremely high winds and power outages lasting several days, the Hurlburt Field housing area was covered

by several feet of water and some houses located on the waterfront were completely destroyed.

Almost immediately in the wake of Hurricane Opal, Hurlburt Field and Eglin Air Force Base claims personnel on disaster response teams conducted damage assessments and initiated action under the Military Personnel and Civilian Employees' Claims Act, Title 31, United States Code, Sections 3701 and 3721, to furnish emergency financial relief to the literally thousands of Air Force members who resided on base and were adversely affected by the storm.

Within the first few days, with the assistance of Air Force finance personnel, Air Force claims representatives placed

over \$50,000 in initial partial claims payments in the hands of several hundred service members, covering their loss of food supplies and enabling them to obtain immediate necessities. In the following months, claims personnel at both installations approved nearly 3,300 claims with payments exceeding \$845,000. Because claimants have up to two years from the date of the storm to file their claims, the total relief provided to Air Force members and their families under the claims act for the on-base personal property destruction caused by Hurricane Opal may reach one million dollars.

The Hurricane Opal claims effort is just the most recent

example of the assistance available through Air Force claims. The two most significant Air Force claims efforts occurred after the eruption of Mount Pinatubo in 1991 and the furious hurricane named Andrew in 1992. During the two years following the evacuation of Clark Air Base due to the volcano, Air Force claims examiners worldwide approved 12,000 claims, paying Air Force members over \$38 million. Hurricane Andrew and the near destruction of Homestead Air Force Base resulted in 4,000 claims with payments exceeding \$33 million.

Of course, on an individual scale, the total loss of a household goods shipment in a warehouse fire or due to a stolen moving van has the same effect as any hurricane on an Air Force family. In such a situation, an individual may expect the same effective claims response rendered to natural disaster victims. The full relief possible under the claims act will be given to help restore the family's personal property.

While the Air Force claims response has helped tens of thousands of Air Force members and served as an invaluable financial safety net, limitations contained in the claims act precluded full recovery by many members and barred any payment to other Air Force personnel, principally individuals who suffered losses at their off-base homes in the United States.

As mentioned, the authority for the Air Force claims program stems from the Military Personnel and Civilian Employees' Claims Act. This statute also allows the Air Force to pay members' claims for loss of or damage to personal property incident to service. Although the statute is fairly generous, at least three features of the claims act limit the amount and extent of available recovery.

First, the statute limits the total amount payable for any one claim or incident to \$40,000. Many service members who conduct a thorough inventory of their household possessions, including vehicles, usually discover the value of their property exceeds the \$40,000 maximum payment cap.

Second, the statute specifically excludes any payment for loss or damage of personal property located in a residence in the states which was not provided or furnished by the federal government. In other words, the claims act coverage within the United States usually does not extend to losses at homes located off base. On one occasion, Congress did provide additional relief through special legislation applicable only to military members who suffered losses off base as a result of Hurricane Andrew. To date, no such congressional intervention for Hurricane Opal claims is apparent.

Finally, the legislative history associated with this claims statute

indicates Congress' intent that for loss of property, a military member should receive reimbursement equal to the fair market value of the item. Put another way, the claims statute does not provide full replacement coverage. For example, if a service member loses a 5-year-old television in a hurricane, the Air Force may only pay him the value of a 5-year-old television and not the replacement cost of a new television.

Natural disasters clearly demonstrate the Air Force claims program has the capacity to restore the property and lives of Air Force members and their families. However, Air Force personnel also need to understand the shortfalls associated with the claims statute and protect their property through private insurance. Obviously, for Air Force members living off base, private property insurance is critical. But, all personnel, even those living on an Air Force installation, should consider private insurance because the value of most households far exceeds \$40,000 and most insurance companies can provide full replacement cost coverage.✍

Note: At press time, Congress approved an Air Force-initiated provision which may increase coverage up to \$100,000 for claims arising from "emergency evacuations or extraordinary circumstances." Air Force property owners should not rely on this as their only potential source of compensation.

Fraud in the Air Force



Maj. James G. Pasierb
AFOSI/PA DSN 297-4728

The Air Force Office of Special Investigations (AFOSI) investigates all types of fraud cases against the government. Fraud costs the Air Force millions of dollars annually. Most AFOSI fraud investigations are in the procurement area: product substitution/diversion/mischarging, conflicts of interest, and bribery. Other types of fraud involve military and civilian members who have been caught cheating the Air Force. In these budget-tightening days, the impact of fraud, waste, and abuse is felt throughout the Air Force, and we should all accept the responsibility to prevent it at every opportunity. Mutual command and AFOSI support coupled with teamwork are essential for successful prevention, detection, and neutralization of fraud. Here are some examples.

False Claims

Subject: Base Housing Management Contractor Site Manager

Synopsis: A housing maintenance manager at a southern

state Air Force base defrauded the government by submitting bills for parts at more than twice their purchase price. The contractor convinced several of the local merchants to give him blank invoices. He would then fill in fictitious amounts and submit them for payment. In addition, he changed amounts on other invoices.

Results: The manager pled guilty in lieu of a grand jury indictment. He was ordered to pay \$152,753 in restitution and a \$3,000 criminal fine and was sentenced to one year in jail. He is also barred from doing business with the government until June 1998.

Supplying Substandard Aircraft Parts

Subject: U.S. Air Force Parts Supplier

Synopsis: The investigation was based on allegations that the company failed to perform required tests on military and commercial aircraft fasteners and falsely certified that the tests were performed. Three hundred samples were tested by a West Coast aircraft manufacturer and a state university. Most were deter-

mined to be defective. No safety of flight issues have been identified.

Results: The vice president of the company was sentenced to six months home confinement, three years probation, and 150 hours of community service and was ordered to pay a \$25,000 fine. The company was ordered to pay a \$1,250,000 criminal fine, \$653,910 in investigative costs, restitution of \$1,250,527, and a special assessment of \$600. Debarment action is pending.

Unauthorized Wear of Uniform Items

Subject: U.S. Air Force Officer

Synopsis: The individual allegedly wore a Purple Heart with one Oak Leaf Cluster on his uniform. When queried about his authorization to wear the medal, the individual told two different stories. A review of the individual's records revealed he was not authorized to wear the medals.

Results: The officer forfeited \$5,950 and was given an Article 15 and a written reprimand.

Summary of Recent Audits



Ms. Terri Buckholtz

AFAA/DOO DSN 426-8012

The Air Force Audit Agency (AFAA) provides professional and independent internal audit service to all levels of Air Force management. The reports summarized here discuss ways to improve the economy, effectiveness, and efficiency of installation-level operations and, therefore, may be useful to you. Air Force officials may request copies of these reports by contacting Ms. Terri Buckholtz at the number above or writing her at HQ AFAA/DOO, 1125 Air Force Pentagon, Washington DC 20330-1125.

Management of the Air Force Report of Survey Program at an Air Force Space Command installation needed improvement. Specifically, reports of survey with recommended financial liability were not always effectively monitored or processed in a timely manner. Some liability assessments,

initiated prior to January 1, 1995 and totaling approximately \$200,000, were still open. In addition, reports of survey were not always accomplished when required. The audit cited examples of unsubstantiated computer equipment write-offs and damaged government vehicle incidents where reports of survey should have been initiated. (*Report of Audit 26196007*)

Review of Air Force Depot Maintenance Service, Defense Business Operations Fund, for Fiscal Year 1995 Revenues and Cost of Goods Sold at a base defense accounting office revealed internal controls were not sufficiently applied to assure compliance with laws/regulations and accurate reporting in financial reports. This review, related to requirements of the Chief Financial Officers Act, disclosed that revenues recorded for completed organic maintenance work were not consistent with the percentage of completion or completed order method. In addition, contractual profits and losses

were not always reported properly and unit repair cost estimates were not always monitored and adjusted to reflect actual costs incurred. Further, unliquidated obligation (ULO) balances of completed contracts were not always reconciled and adjusted. For example, one completed contract reviewed during the audit had a \$3.8 million ULO that could be released and put to better use. (*Report of Audit 40596015*)

The Intrusion Detection System (IDS) Contract at an Air Mobility Command installation was not effectively managed. Specifically, the contract provided for an unneeded annual IDS equipment inspection and maintenance. Further, contractor performance was not adequately surveilled and tenants were charged incorrect fees for IDS services. In addition, purchase of the IDS was improperly funded with operating and maintenance funds where investment funding was warranted. (*Report of Audit 50296003*)

WILLS, POWERS OF ATTORNEY, AND MEDICAL DIRECTIVES

Ms. Jane Love
AF/JAG DSN 224-4075

On any given day, a military member can receive a call that directs him or her to pack up and prepare to deploy as part of a military operation. When you receive that call, you face hundreds of things to do to prepare yourself and your family for your departure, often within a matter of hours. One of the things you should *not* have to worry about is what will happen to your family and friends if you are seriously injured or, even worse, if you do not come back.

One of the hardest things an individual has to face is his or her own mortality. It is not easy to do—studies show that most Americans die without a will. Most people will not even plan for incapacity by preparing powers of attorney and medical directives such as living wills and directives for medical care. For those in the military, the importance of preparing a will, power of attorney, and medical directive cannot be overstated. Military members are often placed in positions of danger in the course of their regular military duties. Being legally prepared is even more critical for military person-

nel because they are subject to short-notice deployment to situations involving extreme danger. Once deployed, there are few opportunities to prepare these necessary legal documents because of the turmoil of military operations. The simple key to legal readiness is to prepare your legal documents now!

First, let's look at wills. Someday, you will die and, hopefully, you will own some property at your death. Many people believe that wills are only appropriate for people with large amounts of money. Not true! Whether you own a great deal of property or only a small amount, a will allows you to choose who will receive that property at your death. Further, if you have children, a will allows you to designate who will raise the children if you and your spouse should die. This is obviously one of the most important decisions you can make in your lifetime. In some cases, it is advisable to set up a trust for minor children so that you can name a trustee who will control the children's inheritance until they reach an age that you choose. Finally, a will allows

you to select the person you want to act as your executor—the person who will ensure that your affairs are settled at your death. The will also make the executor's job much easier and less expensive.

Next, let's look at powers of attorney. A power of attorney is simply a legal document that allows you to transfer your authority to do something to another person. Your personal and financial affairs will not stop just because you are TDY or deployed. Therefore, you can give someone a special power of attorney which is authority for a limited purpose, i.e., to sell your car, rent your home, withdraw money from your bank account, or provide medical care to your children. You can also give someone a general power of attorney which includes a complete "laundry list" of powers that you want the person to exercise on your behalf. Although powers of attorney ordinarily lapse when you, the grantor, become incapacitated, you can make the power of attorney "durable" by including language that clearly states that the power of attorney continues to be effective. A power of attorney can be extremely helpful to a spouse, parent, sibling, or friend in handling your financial and personal affairs anytime you are away from home or you are suddenly incapacitated. However, because powers of attorney allow another person to act as your legal representative, they should be given only to your most trusted family members and associates.

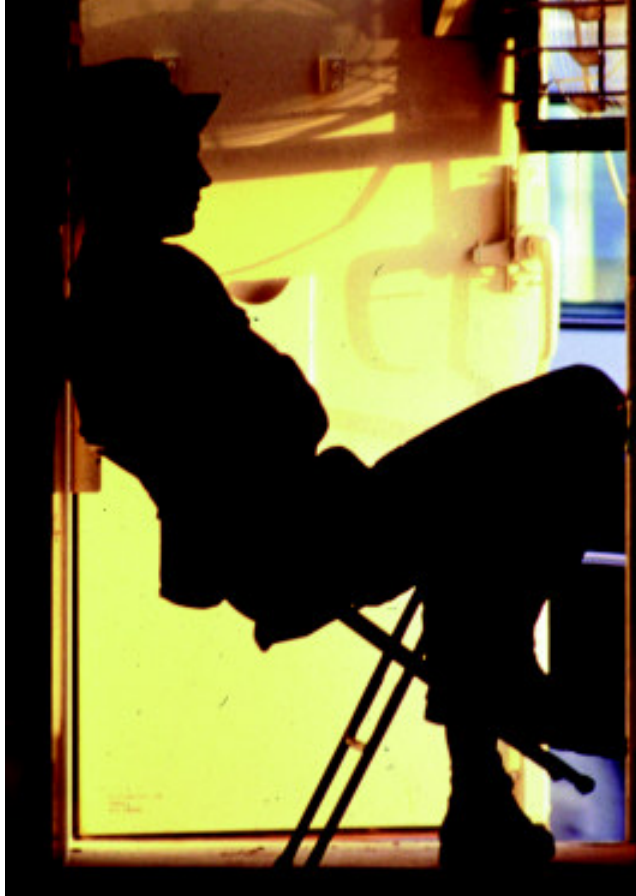
Finally, all states now allow you to make decisions about certain aspects of your medical treatment in the event you become incapacitated. The most well known of these documents is the living will. A living will is merely a written declaration that states your desires about medical treatment once you have been diagnosed with a terminal condition in which there is no hope of recovery and you are unable to communicate your desires. In that case, the living will speaks for you and directs your treating physician to do, or refrain from doing, certain things to keep you alive. Another less publicized document is the power of attorney for medical care. This document allows you to appoint another person to make medical care decisions for you in the event you are incapable of making your own decisions. Again, this designation allows you to make medical care decisions ahead of time and then give a family member or close friend the legal power to carry out your desires. Military medical facilities around the world now honor these documents.

While no one likes to think about illness and death, you can

make life much easier for your family and friends by preplanning your affairs in the event you become seriously ill or die. Don't wait until you receive that telephone call to deploy—do it now! If you qualify for legal assistance, the legal office can prepare wills, powers of attorney, and medical directives free of charge for you and your spouse. Although no one escapes death, there is peace of mind in knowing that by preparing a will, your property will be given to the beneficiaries you have chosen, your children will be raised by people you trust, and you will have eased the administrative and financial burden left behind for your family and friends. There's no better reason to prepare than that!✍



Photo by Master Sgt. Heimer



Air Force Return to Duty Program

A Second Chance?

Photo by Master Sgt. Helmer

Mr. Thomas Markiewicz
AFLSA/JAJR DSN 754-8831

One of your noncommissioned officers was court-martialed. The system worked. He accepted responsibility and was held accountable for his actions. His once bright career is gone. Is there no way he can redeem himself? Do we serve a one mistake and you're out Air Force? For some, there is a second chance.

Through the Air Force Return to Duty Program (RTDP), commanders have the opportunity to give *selected* enlisted personnel under court-martial sentence to confinement a "second chance" at productive Air Force service. The program takes place in a confinement setting at the Naval Consolidated Brig in Charleston, South Carolina. Its participants, known as candidates, are held accountable by the system and accept responsibility for their misconduct. In the RTDP, they are

involved in programs that have as their goal a complete change in the attitudes and conduct that led to past problems. Successful candidates return to active duty and remaining confinement and punitive discharges, if any, are suspended.

This program is based in statute. The Secretary of the Air Force is directed by law to support the program and offenders selected for training with a view toward honorable restoration to duty (10 U.S. Code 951(b)) and to establish a system for the restoration to duty of such offenders who have had the unexecuted part of their sentences remitted or suspended (10 U.S. Code 953(2)). The USC does not have provisions for officers.

In the more than 40 years since it was established, over 17,000 men and women have participated in this rigorous program. Approxi-

mately 40 percent of them have been returned to active duty. Over 97 percent of those returned to active duty have earned “outstanding” ratings from their commanders and gone on to complete their enlistments honorably, many retiring following distinguished careers.

The program lasts four or five months, during which time the candidate must forego parole consideration. The program may take a little longer, which may mean having to stay in confinement past the time the candidate would otherwise be released. A volunteer statement may be revoked at any time. If there is more time to serve on a sentence, then it’s back into confinement; if not, the candidate can go home.

The candidates get back to active duty by working hard. Candidates are regularly evaluated for potential return to active duty by a Treatment Team composed of a social worker, psychologist, substance abuse and mental health technicians, military training managers, and a chaplain. The team meets periodically to assess each candidate’s progress in individual and group therapy, seminars, military training, and work outlet assignments. When a final disposition is made, a board

is convened at the Charleston Brig which considers a candidate’s judgment, impulse control, and coping skills; acceptance of responsibility; potential for future misconduct; and promise to contribute to the Air Force.

The board also considers good order and discipline and asks itself two final questions: “As a commander or supervisor, would I want this airman working for me?” and “Considering the candidate’s entire background and potential value to the Air Force, should this airman be returned to duty?” The board then makes its recommendation to the Air Force Clemency and Parole Board which acts on the behalf of the Secretary of the Air Force in either returning the candidate to duty or eliminating him or her from the program. Candidates may be removed, for cause, earlier from the RTDP by the Air Force commander at the Charleston Brig.

If a candidate graduates from the program and is returned to duty, he or she goes to a new Air Force base. Graduates will not stay at the Air Force base at Charleston and usually will not go overseas, at least initially. They will serve at least one year or until their enlistment expires, which-

“Over 97 percent of those returned to active duty have earned “outstanding” ratings from their commanders and gone on to complete their enlistments honorably, many retiring following distinguished careers.”

ever is later. If they desire to reenlist thereafter, members may need to secure waivers of high-year tenure rules but there are no promises. There will be an attempt made to assign them in their original Air Force specialty code (AFSC) if that is their desire. A security clearance lost as a result of a court-martial will not be restored simply as a consequence of return to duty, which may limit AFSC choices. Lost grade, once approved by the convening authority, cannot be returned through the RTDP. Candidates may, however, petition the Air Force Board for Correction of Military Records to restore some or all of the stripes lost by court-martial.

While family members are encouraged to visit candidates, they are advised not to move to the Charleston area while their loved ones are in the program. The RTDP demands the full-time attention of candidates. Moreover, quarters are not authorized and the RTDP is not a permanent change of station move with entitlements. Non-emergency leave is not authorized during the program.

Only general court-martial convening authorities can recommend direct entry into the RDTP at the time of action on the court-martial sentence. Squadron commanders can recommend direct entry for airmen whom they believe could benefit themselves and the Air Force by returning to duty once "re-blued." Wing commanders will value the judgment of their squadron commanders in deciding whether

to act favorably on the request of a member to participate in the RTDP.

It seems the Air Force does grant a second chance after all, but this second chance is not a "freebie." Entry into this program does not guarantee successful completion and a return to active duty. It is reassuring to note that it is up to the individual to demonstrate that rehabilitation has occurred.✍

Those eligible for the Return to Duty Program are those Air Force members who:

- ✧ Are enlisted. This program isn't available to officers.
- ✧ Were court-martialed.
- ✧ Volunteer to participate.
- ✧ Have demonstrated a desire to change negative attitudes and behaviors.
- ✧ Are medically cleared for world-wide duty.
- ✧ Can show a solid military record.
- ✧ Have no more than limited prior criminal history, military or civilian.
- ✧ Have no history of violent or sex offenses. For rare exceptions that are granted, the individual must complete long-term treatment prior to entry into the RTDP.
- ✧ Must have at least 30 days' confinement remaining, with a punitive discharge, or 60 days confinement remaining, without a punitive discharge, prior to entry.



The above photo reflects members of the United States Air Force Court of Criminal Appeals, formerly the Air Force Court of Military Review, headquartered at Bolling Air Force Base, Washington, D.C. Standing are Judges Cregar, Senander, Morgan, Becker, Starr, and Connelly. Seated are Senior Judge Schreier, Senior Judge Heimburg, Chief Judge Dixon, Senior Judge Pearson, and Judge Gamboa. All are specially-appointed judge advocate colonels. The court automatically reviews all cases in which the approved sentence includes death, confinement for one year or more, or a punitive discharge. Cases are usually decided by panels composed of three judges. Congress enacted legislation which changed the Court's name to the Air Force Court of Criminal Appeals in October 1994.

Please send your manuscripts or a 3.5 disk to HQ AFIA/CVC, TIG Brief Editor; 9700 G Avenue SE, Suite 320F; Kirtland AFB NM 87117-5670. If sending electronically, please mail to the following Internet address: tig@smtps.saia.af.mil.

“The military justice system is the newest, most forward-thinking criminal code in our nation and is certainly the most protective of individual rights. ... Indeed, military members have more rights on appeal, as a legal and practical matter, than their civilian counterparts.”

- Lt. Col. Michael Breslin
Appealing Court-Martial Convictions

